Small Cable Business Association
c/o Kinley Simpson Associates
7901 Stoneridge Drive Suite 404 Pleasanton, CA 94588
Phone (510) 463-0404 FAX (510) 463-9627

July 12, 1995

Mr. John F. Cooke
President
The Disney Channel
3800 W. Alameda Avenue
Burbank, CA 91505

Dear Mr. Cooke:

We have been informed that your company continues to deny the programming of The Disney Channel to the National Cable Television Cooperative, a program purchasing group for small cable operators. During the Senate's consideration of S. 652, both Time-Warner and Viacom decided to execute contracts with the Co-op.

In light of this, we thought you would be interested in the enclosed article about small operators' continued determination to have all program suppliers make their programming available to the Co-op. On behalf of its 370 member companies, the Small Cable Business Association calls on The Disney Channel to follow the lead of Time-Warner and Viacom by ending the unreasonable refusal to sell your programming to the Co-op.

Sincerely,

David D. Kinley

David D. Kinley
Chairman

Small Cable Business Association
c/o Kinley Simpson Associates
7901 Stoneridge Drive Suite 404 Pleasanton, CA 94588
Phone (510) 463-0404 FAX (510) 463-9627

July 12, 1995

Mr. Steven M. Bornstein
President
ESPN, Inc.
ESPN Plaza
Bristol, CT 06010

Dear Mr. Bornstein:

We have been informed that your company continues to deny the programming of ESPN and ESPN2 to the National Cable Television Cooperative, a program purchasing group for small cable operators. During the Senate's consideration of S. 652, both Time-Warner and Viacom decided to execute contracts with the Co-op.

In light of this, we thought you would be interested in the enclosed article about small operators' continued determination to have all program suppliers make their programming available to the Co-op. On behalf of its 370 member companies, the Small Cable Business Association calls on ESPN, Inc. to follow the lead of Time-Warner and Viacom by ending the unreasonable refusal to sell your programming to the Co-op.

Sincerely,

David D. Kinley

David D. Kinley
Chairman

Small Cable Business Association
c/o Kinley Simpson Associates
7901 Stoneridge Drive Suite 404 Pleasanton, CA 94588
Phone (510) 463-0404 FAX (510) 463-9627

July 12, 1995

Mr. Nicholas Davatzes
President
Arts & Entertainment Network
235 E. 45th Street, 10th Floor
New York, NY 10017

Dear Mr. Davatzes:

We have been informed that your company continues to deny the programming of Arts & Entertainment to the National Cable Television Cooperative, a program purchasing group for small cable operators. During the Senate's consideration of S. 652, both Time-Warner and Viacom decided to execute contracts with the Co-op.

In light of this, we thought you would be interested in the enclosed article about small operators' continued determination to have all program suppliers make their programming available to the Co-op. On behalf of its 370 member companies, the Small Cable Business Association calls on the Arts & Entertainment Network to follow the lead of Time-Warner and Viacom by ending the unreasonable refusal to sell your programming to the Co-op.

Sincerely,

David D. Kinley

David D. Kinley
Chairman

Small Cable Business Association
c/o Kinley Simpson Associates
7901 Stoneridge Drive Suite 406 Pleasanton, CA 94588
Phone (510) 463-0404 FAX (510) 463-9627

July 12, 1995

Mr. Douglas W. McCormick
President
Lifetime Entertainment Services
309 W. 49th Street, 17th Floor
New York, NY 10019

Dear Mr. McCormick:

We have been informed that your company continues to deny the programming of Lifetime to the National Cable Television Cooperative, a program purchasing group for small cable operators. During the Senate's consideration of S. 652, both Time-Warner and Viacom decided to execute contracts with the Co-op.

In light of this, we thought you would be interested in the enclosed article about small operators' continued determination to have all program suppliers make their programming available to the Co-op. On behalf of its 370 member companies, the Small Cable Business Association calls on Lifetime to follow the lead of Time-Warner and Viacom by ending the unreasonable refusal to sell your programming to the Co-op.

Sincerely,

David D. Kinley
Chairman

Small Cable Business Association
c/o Kinley Simpson Associates
7901 Stoneridge Drive Suite 404 Pleasanton, CA 94588
Phone (510) 463-0404 FAX (510) 463-9427

July 12, 1995

Ms. Kay Koplovitz
President
USA Network
1230 Avenue of the Americas, 18th Floor
New York, NY 10019

Dear Ms. Koplovitz:

We have been informed that your company continues to deny the programming of USA Network to the National Cable Television Cooperative, a program purchasing group for small cable operators. During the Senate's consideration of S. 652, both Time-Warner and Viacom decided to execute contracts with the Co-op.

In light of this, we thought you would be interested in the enclosed article about small operators' continued determination to have all program suppliers make their programming available to the Co-op. On behalf of its 370 member companies, the Small Cable Business Association calls on USA Network to follow the lead of Time-Warner and Viacom by ending the unreasonable refusal to sell your programming to the Co-op.

Sincerely,

David D. Kinley
Chairman

GROUP W SATELLITE COMMUNICATIONS

Westinghouse Broadcasting Company, Inc.
200 Pacific Drive, Stamford, CT 06921-2210 (203) 965-6000

MARK MELNICK
Assistant General Counsel

June 1, 1995

VIA FAX (913-599-5905) & MAIL

Mr. Frank Hughes
Vice President
National Cable Television Cooperative, Inc.
14809 West 95th Street
Lenexa, KS 66215

Re: Country Music Television

Dear Mr. Hughes:

As requested, this will confirm in writing the statement made orally by Francie Leader of Group W to you at your May 8, 1995 meeting with Ms. Leader in Dallas. That statement was that Country Music Television, Inc. did not intend to renew the January 1, 1989 Affiliate Licensing Agreement with National Cable Television Cooperative, Inc. when that agreement expires on December 31, 1995, nor did it intend to enter into a new or replacement agreement with NCTC relating to distribution of the Country Music Television program service by or through NCTC after that date.

Very truly yours,

Mark Melnick

cc: Michael Pandiri, NCTC
Francie Leader, Group W

GROUP W SATELLITE COMMUNICATIONS
Westinghouse Broadcasting Company, Inc.
[illegible] Stamford, CT 06904-2210 (203) 965-6000

MONIK MELNICK
Assistant General Counsel

June 1, 1995

VIA FAX (913-599-5903) & MAIL

Mr. Frank Hughes
Vice President
National Cable Television Cooperative, Inc.
14809 West 95th Street
Lenexa, KS 66215

Re: Group W Discount Programs

Dear Mr. Hughes:

This is in response to a request you made to Francis Leader of Group W in your May 26, 1995 telephone conversation with Mr. Leader. Your request was for Group W to reiterate the qualifications of Group W's standard U.S. cable industry The Nashville Network and Country Music Television affiliate-wide cross-discount program that NCTC does not satisfy. You told Mr. Leader in that conversation that you needed those qualifications restated to assist you in understanding why Group W offered NCTC its alternate standard U.S. cable industry discount program, which operates on a system-by-system basis and, overall, has fewer discount benefits.*

The qualifications of Group W's affiliate-wide discount program that NCTC does not satisfy include the following:

1. NCTC does not have an executed, written affiliate agreement for distribution of TNN entered into with Group W on behalf of the owner of TNN.

2. NCTC does not have an executed, written affiliate agreement for distribution of CMT entered into with Group W on behalf of the owner of CMT.

3. NCTC does not have CMT license fees, from which the CMT discounts of the affiliate-wide program would apply, equal to Group W's standard rate card rates for CMT.

---

* As you know, the system-by-system discount offer was made to NCTC in Francis Leader's December 6, 1994 letter to NCTC's President, Michael Patrick. NCTC has yet to accept that offer.

[illegible] 6-1-95(mlm)

4. Because NCTC has no TNN subscribers, NCTC cannot satisfy the affiliate-wide discount program's qualification that the ratio of NCTC's CMT subscribers to NCTC's TNN subscribers be at least 30% for each month from May 1993 to December 1995. (Even if one were to look at TNN subscribership of the cable operators to which NCTC distributes CMT, the 30% CMT:TNN test would be unsatisfied.)

5. Because NCTC has no TNN subscribers, NCTC cannot satisfy the affiliate-wide discount program's qualification that the ratio of NCTC's TNN subscribers to NCTC's total basic subscribers for each month from June 1993 to December 1995 be no lower than it is for May 1993. (Even if one were to look at TNN subscribership of the cable operators to which NCTC distributes CMT, it has not been demonstrated that the TNN:basic ratio test would be satisfied.)

I trust that the foregoing clarifies for you why NCTC does not qualify for Group W's TNN-CMT affiliate-wide discount program.

Very truly yours,

Mark Melnick

cc: Michael Pandzik, NCTC
Francie Leader, Group W

[illegible]

EXHIBIT C

ESPN, INC.
605 THIRD AVENUE, NEW YORK, NY 10158-0180
(212) 916-9209

EDWIN M. DURSO
EXECUTIVE VICE PRESIDENT
AND GENERAL COUNSEL
(212) 916-9216
(212) 916-9212 FAX

July 27, 1993

Mr. Michael L. Pandzik
President
National Cable Television Cooperative, Inc.
14809 West 95th Street
Lenexa, Kansas 66215

Re: Your Letter of July 1, 1993

Dear Mr. Pandzik:

Your letter to ESPN's President, Steven Bornstein, has been referred to me for reply. To come directly to the point, your facts are in error -- Sections 628(b) and (c) of the Communications Act do not require ESPN to negotiate with or license its program service to you. Nor do the reports or pending Consent Decree cited by you bear on ESPN's relations to your individual members.

To the best of our knowledge every member of your organization has an affiliation agreement with ESPN and we have previously specified for you the reasons why ESPN does not choose to negotiate a master agreement with NCTC. You can be assured that we will continue to make our programming available to your members.

Very truly yours,

Edwin M. Durso

EMD/lm

cc: S. Bornstein
G. Bodenheimer

Exhibit B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
THE WALT DISNEY COMPANY,	)	BTCCT-950823KF-LJ
Transferor,	)	
	)	
and	)	
	)	
	)	
CAPITAL CITIES/ABC, INC.,	)	
Transferor,	)	
	)	
and	)	
	)	
	)	
THE WALT DISNEY COMPANY,	)	
Transferee	)	
	)	
	)	
	)	
Transfer of Control of the broadcast licenses of Corporation Holding Broadcast Station License KCAL-TV to the Walt Disney Company and the Transfer of Control of the broadcast licenses held by Capital Cities/ABC to the Walt Disney Company.	)	

REPLY TO THE OPPOSITION TO THE PETITION TO DENY

ERIC E. BREISACH
CHRISTOPHER C. CINNAMON
FREDERICK G. HOFFMAN
Howard & Howard
107 W. Michigan Avenue, Suite 400
Kalamazoo, Michigan 49007

October 19, 1995

Attorneys for Small Cable Business Association

TABLE OF CONTENTS

Summary

The applicants bear the burden of demonstrating to the satisfaction of the Commission that its proposed broadcast license transfer serves the public interest. The *Opposition to Petition to Deny* ("*Opposition*") filed by Capital Cities/ABC, Inc. ("Cap Cities") fails to address important factual issues critical to a proper public interest determination. Instead, the *Opposition* attempts to deflect Commission inquiry into the Applicants' conduct and plays evidentiary and procedural games inappropriate for a license transfer proceeding. SCBA has demonstrated in its *Petition to Deny* ("*Petition*") and in this *Reply*, that the unprecedented concentration of media and market power in one entity gives rise to expanded abuse of market power inimical to key elements of the public interest.

Cap Cities' *Opposition* fails to meet its statutory burden in the face of a prima facie showing by SCBA that the grant of consent to the transfers is inconsistent with the public interest. The *Opposition* artfully attempts to draw the Commission away from a public interest inquiry. The *Opposition* suggests that because the Applicants' conduct is not illegal, the Commission is powerless to consider it in a license transfer proceeding. No law supports this dodge.

Rather than address issues of fact raised by SCBA, the *Opposition* repeatedly mischaracterizes SCBA's positions. For example, the *Opposition* declares that SCBA objects to the Congressional grant of retransmission consent rights and a broadcaster's right to obtain compensation for its signal. Not surprisingly, the *Opposition* does not cite to SCBA's *Petition* to support this rhetoric; no such support exits. To the contrary, SCBA states its objections to the pricing of retransmission consent such that the only economically viable

alternative is to procure cable programming for the broadcaster -- and then at rates substantially higher for small operators. Cap Cities admits such pricing practices. Cap Cities' conduct shows that it has subordinated its public interest obligations to its desire to profit from the sale of cable programming. This conduct injures both program diversity goals and the economic health of the cable industry, all of which are contrary to the intent of Congress and Commission policies.

Cap Cities also needs to be called to task for playing procedural and evidentiary games. Consider, for example, Cap Cities' attempts to distance itself from the comments of one of its most senior officers, who suggested that the post-merger entity may engage in "joint maneuvering" of channels. On this issue and others, Cap Cities fails to meet the statutory requirement that it respond with facts supported by affidavit. Worse, this is one of several examples of the gamesmanship employed by Cap Cities and its lack of candor before the Commission. This lack of candor also manifests itself in the apparent absence to date of any disclosure by Cap Cities to this Commission of the Department of Justice investigation of the claims raised by SCBA. This Commission, and the D.C. Circuit Court of Appeals, have been very clear that failure to keep this Commission and all parties to license proceedings fully informed, on the record, of the progress of such agency investigations is grounds, in and of itself, for denial of the application.

SCBA, with very limited resources, has come to this Commission with a prima facie case showing substantial public harm if the proposed transfers are approved by the Commission. Cap Cities fails to provide any meaningful response to SCBA's Petition. Application of the Commission's statutory duty requires it to deny the transfer application.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
THE WALT DISNEY COMPANY,	)	BTCCT-950823KF-LJ
Transferor,	)	
	)	
and	)	
	)	
	)	
CAPITAL CITIES/ABC, INC.,	)	
Transferor,	)	
	)	
and	)	
	)	
	)	
THE WALT DISNEY COMPANY,	)	
Transferee	)	
	)	
	)	
	)	
Transfer of Control of the broadcast licenses of Corporation Holding Broadcast Station License KCAL-TV to the Walt Disney Company and the Transfer of Control of the broadcast licenses held by Capital Cities/ABC to the Walt Disney Company.	)	

REPLY TO THE OPPOSITION TO THE PETITION TO DENY

The Small Cable Business Association ("SCBA"), through counsel, replies to the *Opposition to Petition to Deny* (*"Opposition"*) filed by Capital Cities/ABC, Inc. ("Cap Cities").

Introduction

Two consistent themes run throughout the *Opposition*: (1) the conduct of which SCBA complains to this Commission is not illegal and is therefore irrelevant to the license

transfers; and (2) this Commission lacks authority to investigate and consider its prior conduct. Both positions are wholly inaccurate. The statutory standard to which the transfers must be held is whether they are in the public interest. The *Opposition* completely sidesteps this issue, instead it attempts to divert and discourage the Commission from fulfilling its statutory obligation. Consequently, the Commission must deny consent to transfer the licenses.

I. THE OPPOSITION FAILS TO CONFRONT THE SUBSTANTIAL AND MATERIAL PUBLIC INTEREST QUESTIONS RAISED BY THE APPLICANTS' CONDUCT AND THE PROPOSED TRANSFER.

The Communications Act prohibits the transfer of a broadcast license unless the Commission finds that the proposed license transfer serves the public interest.[1] The *Opposition* attempts to sidestep this threshold requirement by declaring that SCBA fails "to raise a substantial or material question whether the public interest would be served by the proposed transfer."[2] SCBA is compelled to reply to this unsupportable statement.

The *Opposition's* conclusions concerning the public interest fail to confront both law and fact. Considerable precedent addresses the public interest in two relevant areas: (1) programming diversity; and (2) a healthy small cable industry. Apparently, the *Opposition* encourages the Commission to ignore this law and policy. As shown in the *Petition*, the Applicants[3] have offended each of these important public interests in dealing with small

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[1] 47 U.S.C. § 310(d).

[2] *Opposition* at 2.

[3] Cap Cities and The Walt Disney Company are collectively referred to as ("Applicants").

cable operators. The proposed transfer will exacerbate these problems due to the Applicants' geometric increase in market power.

A. The courts and the Commission have consistently articulated that programming diversity is a critical element of the public interest.

The first element of the public interest threatened by the proposed transfer is programming diversity. For over fifty years, the courts and the Commission have identified programming diversity as an essential public interest.

> The Communications Act requires that Commission designate an application for hearing if a substantial and material question of fact is presented or if the Commission is unable, 'for any reason' to find that the public interest, convenience and necessity would be served by granting the application. The public welfare requires the Commission to provide the 'widest possible dissemination of information from diverse and antagonistic sources' and to guard against undue concentration of control of communications power.[4]

The Commission's continuing commitment to programming diversity reflects the federal courts concern for protecting this vital public interest. "Furtherance of diversity and competition remains the cornerstone of Commission regulation."[5]

The *Opposition* attempts to deflect attention from this element of public interest by casting SCBA's concerns as an attack on retransmission consent.[6] The Commission should

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[4]*Joseph v. FCC*, 404 F.2d 207, 211 (D.C. Cir. 1968) citing *Associated Press v. United States*, 326 U.S. 1, 20 (1945) and *Scripps-Howard Radio, Inc. v. FCC*, 189 F.2d 677, 683, cert. denied, 342 U.S. 830 (1951). *See also FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 795 (1978).

[5]*Notice of Proposed Rulemaking*, MM Docket No. 95-92, FCC 95-254 (released June 15, 1995) at ¶ 7 (emphasis added). *See also* In re Hopkins Hall Broadcasting, Inc., *Memorandum Opinion and Order*, FCC 95-331 (released September 5, 1995) at ¶ 10, n. 5, citing *Associated Press v. U.S.*, 326 U.S. at 20.

[6]*Opposition* at 4.

see through this lawyerly legerdemain. SCBA takes no issue here with retransmission consent. Rather, the *Petition* identifies examples of the Applicants' conduct that has offended the public interest of programming diversity, about which Congress has spoken.

> There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.
>
> * * *
>
> It is the policy of this Congress in this Act to -- . . . promote the availability to the public of a diversity of views and information through cable television and other video distribution media.[7]

Congress, the courts and the Commission speak with one voice on the importance of programming diversity. Contrary to the *Opposition's* argument,[8] the Commission has ample authority to inquire or even "intrude" into the proposed license transfer because it impacts the public interest in programming diversity.

B. SCBA has raised substantial and material issues of fact concerning the Applicants' abuse of their market power in restricting the diversity of programming available to small cable.

Unlike nearly all other broadcast entities and programming providers, the Applicants have refused to provide programming to certain small cable operators on terms that attempt to accommodate the unique circumstances of small cable. The *Opposition* admits this.[9] The *Opposition* also admits refusing to deal with NCTC, the co-op aimed at offering

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[7] 1992 Cable Act § 2(a)(6) and (b)(1).

[8] *Opposition* at 8, "We do not believe that the Commission has the authority to intrude, in light of the Congressional decision to the contrary. In any event the public interest would plainly not be served by such action."

[9] *Opposition* at 5.

economies of scale to programmers and small cable.[10] The consequences of this conduct are not mysterious; many small systems are deprived of some of Applicants' programming. This is a patent example of the abuse of market power resulting in decreased diversity of programming.

The *Opposition* reflects the Applicants' comfort with bruising small cable with market muscle. The *Opposition* argues that no law prevents this conduct.[11] According the *Opposition*, the Commission's public interest mandate is not law.[12] This strange statement conflicts with overwhelming statutory, judicial and Commission authority to the contrary.[13]

With extremely limited resources, SCBA has submitted substantial and material evidence showing that the Applicants' conduct has curtailed programming diversity.[14] SCBA has submitted evidence that a key senior officer of the post-merger entity is exploring expansion of its joint channel maneuvering strategy.[15] SCBA suggests that the investigatory resources of the Commission will uncover more instances of the Applicants' anti-programming diversity conduct. Curiously, the *Opposition* attempts to deflect any such

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[10]*Opposition* at 6.

[11]*Opposition* at 4-6.

[12]*Opposition* at 7.

[13]See authority cited in notes 4 and 5, *supra*; and notes 17, 22, 26-30, *infra*.

[14]*Petition* at 7-10.

[15]*Petition* at 11-12.

inquiry, arguing that "we do not believe that the Commission has the authority to intrude."[16]

On this point of law, the *Opposition* dissembles. More accurately stated, the law is: Having been alerted to the threat to programming diversity, "The Commission [has] a duty to explore any related matters which might bear upon the public interest, whether urged by the parties or not."[17] Because the Applicants attempt to discourage the Commission from fulfilling its duty to investigate, SCBA must ask "What are they hiding?" Only a full investigation and a fair hearing can answer this.

C. A healthy small cable industry serves the public interest; the applicants' conduct is detrimental to that interest.

The *Opposition* contends that SCBA fails to raise a credible question concerning the impact of the proposed transfer on the public interest.[18] This assertion neglects the extensive Commission action demonstrating the importance to the public interest of a healthy small cable industry.[19] Most recently, in *Eleventh Reconsideration Order*, the Commission expressly stated that due to the unique challenges and increased costs facing

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[16]*Opposition* at 8.

[17]*L.B. Wilson, Inc. v. FCC*, 397 F.2d 717, 721 (D.C. Cir. 1968) (emphasis added); See also *Citizens TV Protest Committee v. FCC*, 348 F.2d 56, 62 (1965); *Clarksburg Publishing Co. v. FCC*, 225 F.2d 511, 515 (1958).

[18]*Opposition* at 11.

[19]The Commission has made consistent and extensive efforts to address the unique circumstances of small cable and to reduce regulatory burdens and costs on small systems. These efforts are summarized and extended in *Sixth Report and Order and Eleventh Order on Reconsideration*, MM Dockets Nos. 92-266 and 93-215, FCC 95-196 (released June 5, 1995) ("*Eleventh Reconsideration Order*").

small cable, small cable operators warranted increased Commission assistance to better serve subscribers.[20]

The Commission has recognized that one reason that small operators face unique challenges is due to high programming cost.[21] Small operators have attempted to ameliorate this problem through membership in NCTC. Yet the Applicants continue to refuse to deal with NCTC.

The *Opposition* fails to show any credible evidence why the Applicants refuse to deal with NCTC. The *Opposition* makes vague reference to "a variety of reasons to be wary about dealing with buying cooperatives...."[22] None of these reasons apply to NCTC, which *has always* paid on time, and which has demonstrated none of the conduct that concerns the *Opposition*. The *Opposition* presents no evidence to the contrary.

The *Opposition* fails to enlighten the Commission on another key issue: the Applicants' intent in not dealing with NCTC. Factual disputes in license transfers include disputes over the intent underlying an applicant's conduct.[23] SCBA contends that the Applicants' conduct shows their intent to use their combined market power to squeeze small

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[20]*Id.* at ¶ 3.

[21]*Eleventh Reconsideration Order* at ¶¶ 17, 56. The assistance provided by the Commission treats the symptoms, not the source of the problem. To the extent that operators are allowed to pass higher costs through to subscribers, the public interest is further harmed by raising the cost of these services to individual consumers. Furthermore, cost pass-throughs do not ensure the financial health of small cable operators as they become more vulnerable to competition such as DBS which is becoming more prevalent in rural areas.

[22]*Opposition* at 7.

[23]*California Public Broadcasting Forum v. FCC*, 752 F.2d 670, 679 (D.C. Cir. 1985)

cable operators and hold out for "full retail" programming charges when volume discounts would have to be offered NCTC. Similarly, the Applicants' conduct shows an intent to use market power to holdout for full retransmission consent fees or tying arrangements, when less abusive broadcasters accommodate the unique circumstances of small cable. The *Opposition's* failure to articulate any credible justification for the Applicants' refusal to deal with NCTC, Sun Country Cable and other small operators raises serious questions concerning the Applicant's intent.

This issue as well warrants a full investigation and hearings. As the D.C. Circuit has stated, "It is fundamentally unfair for FCC to dismiss a challenge where the challenging party has seriously questioned the validity of a representation and the defending party is the party with access to the relevant information."[24]

The consequences of the Applicants' conduct is that small cable operators that are unable to capitulate to the Applicants' demands cannot provide the video and broadcast programming they and their subscribers desire. Programming costs are elevated and programming diversity is constrained. Small cable's ability to compete with DBS and other providers benefitting from volume discounts is shackled. At bottom, the health of small cable suffers. This adverse impact on a recognized public interest will worsen if the transfers are granted without a full investigation, hearings and appropriate safeguards from future abuses of market power.

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[24]752 F.2d at 679 (emphasis added).

D. The Commission has ample authority to inquire into the anti-competitive motives of the Applicants.

In a further attempt to deflect Commission scrutiny, the *Opposition* states that because the Applicants are not vertically integrated programming providers, there are no grounds for government intrusion into marketplace transactions.[25] This pronouncement ignores the law governing the Commission's power to inquire into and redress threats to the public interest in broadcast license transfers.

The Commission may inquire well beyond the concerns raised by the *Petition*. "The statute contemplates that * * * the commission inquiry will extend beyond matters alleged in the protest in order to reach any issue which may be relevant in determining the legality of the challenged grant."[26] Similarly, evidence that a licensee has abused its license by dealing in bad faith justifies Commission investigation and evidentiary hearings.[27] The Applicants' conduct implicates all of these issues.

Concerning the extent to which the Applicants' actions and the proposed transfers impact programming diversity and competition issues, including small cables' ability to compete, the Commission can extend its inquiry into alleged anti-competitive practices by the Applicants.[28] The Supreme Court has recognized broad Commission authority in this area.

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[25] *Opposition* at 8.

[26] *L.B. Wilson, Inc v. FCC*, 397 F.2d 717, 719-720 (D.C. Cir. 1968) (emphasis added).

[27] *FCC v WNCN Listeners Guild*, 450 U.S. 582, 602 (1981); *Mississippi Authority for Educational TV*, 71 FCC 2d 1296, 1308 (1979).

[28] *RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir.), *cert. denied*, 403 U.S. 923 (1971).